

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

WILLIAM ZAVARELLO  
Respondent

Case Nos.: I-00-20234  
I-02-72062

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**FINAL ORDER**

**I. Introduction**

On February 21, 2002, the Government served a Notice of Infraction upon Respondent William Zavarello, alleging that he violated 21 DCMR 708.10, by storing solid wastes solely in plastic bags intended for use as container liners. The Notice of Infraction alleged that infraction occurred at 2468 Ontario Road, N.W., on February 19, 2002, and sought a fine of \$50.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on April 2, 2002 this administrative court issued an order finding Respondent in default and subject to the statutory penalty of \$50 required by D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction on April 10, 2002. Respondent then filed an answer with a plea of Admit with Explanation, to which the Government has responded.

## **II. Summary of the Evidence**

Respondent alleges that he always places his trash in covered trash cans, and that the plastic bags observed by the inspector could not have belonged to him. He asserts that his neighbors usually put their trash out for pick-up on his property because placing it on their own property would inhibit their access to their parking area. Respondent states that he has told his neighbors that he does not mind their doing so, but that they must comply with the law if they do. He states that he gave the neighbors the first Notice of Infraction and asked them to pay the fine since their trash caused the violation, but that they “evidently let it go.”

The Government responds only that Respondent violated § 708.10 and “should be held accountable.” Because this conclusory response contains no argument or representations that address Respondent’s claims, it can be given no weight in deciding whether any reduction of the fine is warranted. *DOH v. 3237 Limited Partnership*, OAH No. I00-70320 at 4, n.3 (Final Order, May 17, 2002).

## **III. Findings of Fact**

Respondent owns property located at 2468 Ontario Road, N.W. Respondent’s plea of Admit with Explanation establishes that plastic bags intended for use as liners only were used to store wastes on his property on February 19, 2002. The waste was generated by Respondent’s neighbors, who could not put out their trash on their own property without impeding their access

to their parking area. When he received the first Notice of Infraction, Respondent gave it to his neighbors and asked them to respond, but the neighbors did not do so.

There is no evidence in the record that Respondent has a history of prior violations.

#### **IV. Conclusions of Law**

The regulation at issue provides:

Plastic bags intended for use as container liners are prohibited for use alone for storing solid waste refuse, except that plastic bags of at least nine (9) mil. thickness with a capacity of no more than thirty-two (32) gallons and securely tied may be used as containers for yard rubbish, provided that bags used for this purpose are marked as yard rubbish and set out for collection on the day(s) designated for yard rubbish collection.

21 DCMR 708.10.

Respondent's plea of Admit with Explanation establishes that he violated § 708.10 on February 19, 2002. His neighbors placed their wastes on the property with his permission and, as owner of the property, he has a duty to make sure that wastes are stored on his property in compliance with the law. Violation of § 708.10 is a Class 4 Civil infraction, punishable by a fine of \$50 for a first offense. 16 DCMR 3216.4(e); 16 DCMR 3201.1(d). Because Respondent does not have a history of prior violations, I will reduce the fine to \$40.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Because the Notice of Infraction named

Mr. Zavarello as the Respondent, the law places the burden of filing a timely response upon him. D.C. Official Code § 2-1802.02(f) (“If a *respondent* has been served a notice of infraction and fails, without good cause, to answer [within the deadline], *the respondent* shall be liable for the penalty . . . .”) (Emphasis added.) Nothing in the Civil Infractions Act permits a Respondent to evade his or her liability for filing a timely answer by unilaterally delegating that responsibility to someone else. By relying upon his neighbors to answer the Notice of Infraction, Mr. Zavarello assumed the risk that they might fail to do so. Because he did so, the statutory penalty of \$50 must be imposed upon him.

## **V. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a total of **NINETY DOLLARS (\$90)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED**      **07/02/02**

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John P. Dean  
Administrative Judge